

IN THE IOWA DISTRICT COURT IN AND FOR MARION COUNTY

**BILLY DEAN CARTER,
BILL G. CARTER and ESTATE OF
SHIRLEY D. CARTER by and through
BILL G. CARTER, Executor,**
Plaintiffs,

vs.

JASON CARTER,
Defendant.

Case No. LACV095809

RULING AND ORDER

This matter is before the Court on Defendant Jason Carter's motion to enlarge or amend the Court's prior ruling on Defendant's petition to vacate the judgment entered against him following a civil jury trial. Defendant also requests the Court take judicial notice of the criminal case brought against him and the outcome. Plaintiffs, Billy Dean Carter, Bill G. Carter and the Estate of Shirley D. Carter resist both requests. Attorneys Mark Weinhardt and David Fautsch represent Plaintiffs. Attorneys, Alison Kanne and Christine Branstad represent Defendant Jason Carter.

I. RELEVANT BACKGROUND

The Court does not repeat here its factual findings as set out in its original ruling on the Petition to vacate but incorporates its findings by this reference. However, as a matter of clarification, the Court notes during the hearing on the Petition to vacate several names of individuals as possible suspects repeated themselves in law enforcement interviews. Where the Court, in its findings, states an "informant" claimed there were two killers, the Court was referencing the summary of the interview of that individual on that occasion. The Court did not intend to suggest that two was the maximum number of other individuals identified as possible suspects.

Since the Court entered its ruling on the Petition to vacate, Jason Carter (Jason) was tried and found not guilty of the criminal charge of first-degree murder based on the same underlying facts. The jury in the criminal case deliberated approximately two hours before reaching its verdict. Jason asks the Court, besides his pending motion for an enlarged or amended ruling, to take judicial notice of the criminal proceeding. Plaintiffs resist.

II. DISCUSSION

Defendant's motion for an enlarged or amended ruling lists six evidentiary matters that Jason asks the Court to "specifically consider and rule on" relative to the petition to vacate. As earlier stated, the Plaintiffs resist on all grounds. The Court addresses the issues in two parts. First, the Court addresses the evidence issues raised by Defendant. Second, the Court considers Jason's request that the Court take judicial notice of the criminal proceeding.

A. Evidence Related Issues.

From the outset, the Court wishes to clarify that it considered all the evidence offered at the petition to vacate hearing. Merely because the Court did not specifically identify in its ruling every piece of evidence offered during the two-day hearing does not mean the Court did not consider it. The Court did. However, some evidence was not material to the outcome and some evidence the Court discussed in a general way as opposed to going through the testimony of each witness. Some issues raised in Defendant's brief were not relevant, from the Court's perspective, to its legal decision. That said, the Court now tackles the evidence Defendant specifically identified in his motion and those matters not previously addressed in the Court's prior ruling.

1. *Bill Carter's Recorded Statement Regarding Rigor Mortis.*

One of the pieces of evidence offered by Defendant during the hearing was a recording made of Bill Carter's interaction with law enforcement during the investigation. In that recording, a distraught Bill Carter questions why law enforcement keeps focusing on the family and states he knows about rigor mortis. He then says Shirley Carter's body was in rigor mortis.

The Court found this evidence was not material to the outcome and would not change the result in the civil case. Bill Carter is not an expert on rigor mortis. He lacks the training, if not the experience, to offer an opinion on that subject. In addition, Bill sounds frustrated, upset during the recording, and anxious for law enforcement to identify Shirley's killer. Bill's frustration appears to have led him to express an unqualified opinion on rigor mortis. This evidence lacks reliability, is probably inadmissible, and, therefore, does not change the outcome of the civil case.

2. Photographs of Jason Carter Assembling the Gun Safe.

Defendant offered into evidence photographs found after the civil jury trial showing him assembling the gun safe where the presumed murder weapon, a rifle, was stored in Bill and Shirley Carter's home. Presumably, the defendant offered these photographs into evidence to establish why Jason Carter's fingerprints were on the gun safe. During the wrongful death trial, Jason Carter testified he knew the evidence showed his fingerprints were found on the gun safe, although he did not recall putting the gun safe together.

Again, the Court found the photographs offered by Jason were not material to the outcome and would not change the result in the civil case. The significance of Jason Carter's fingerprints on the gun safe was not that his fingerprints were on the gun safe without a reasonable explanation. Based on the location of Jason's fingerprints on the gun safe, it was apparent he was involved in its assembly. The significance of the fingerprints related to Jason's credibility and, perhaps, his ability to remember and relate events. Early in the investigation, Jason denied to law enforcement even knowing his father had a gun safe or its location. Such lack of knowledge seems improbable if he actually assembled the gun safe and, certainly, convenient when his mother was recently found dead, probably shot with a weapon taken from the gun safe.

3. The Unidentified Fingerprint(s) on the Gun Safe.

Jason makes much of the fact an unidentified fingerprint was on the gun safe. However, this evidence is not newly discovered and would not change the outcome in the civil case. The fact the Department of Criminal Investigation (DCI) examiner found additional unidentified fingerprints came out during the testimony of the DCI criminalist in the civil case. Further, the laboratory report indicating there were unidentified fingerprints on the gun safe was admitted as evidence during the trial. Such evidence did not change the result then and this Court has no reason to believe it would change it now, even when considered with the other evidence offered by Jason during the petition to vacate hearing.

4. Curt Seddon's Statements Regarding "Two Holes."

During the civil trial, Curt Seddon, one of the first responders to the scene, testified Jason told him there were two bullet holes when it was still too early for investigators to know

the number of bullet holes. It later turned out there were two bullet holes. This testimony supported Plaintiffs' claim that Jason had "premature knowledge" about the murder even before law enforcement could fully investigate the crime; knowledge, presumably, only the killer would have.

The evidence during the petition to vacate hearing established Curt Seddon told investigators, while still at the scene, that either Jason or Bill told him there were two bullet holes. He also told investigators he could not remember which one made the statement. This information was unavailable to Defendant prior to the civil trial, so Jason could not cross-examine the witness based on the earlier statement.

The discrepancy between Curt Seddon's trial testimony and his statement to law enforcement at the crime scene does not create a basis to vacate the judgment or to grant Defendant a new trial. As acknowledged by Defendant, evidence that is merely impeaching is insufficient to vacate a judgment or grant a new trial. In addition, the discrepancy here is not whether the statement was made, but rather who made it. Bill Carter testified that Jason pointed out to him, shortly after his arrival at the scene, the bullet holes, so even if Bill Carter told Curt Seddon there were "two holes," Bill Carter learned that information from Jason. Either way, Jason identified two bullet holes and communicated that information to his father and, perhaps, Curt Seddon. Jason's claim he is entitled to vacation of the judgment or a new trial on this basis is without merit.

5. Jason Carter's Statements Regarding "Evidence Receipts."

Defendant also offered evidence during the Petition to vacate hearing to prove he told law enforcement he had seen "evidence receipts." Jason offered this evidence to show he was honest with law enforcement and he had acknowledged seeing such receipts. Defendant maintains the lead DCI agent claims Jason was not forthcoming with this information, suggesting Jason was sneaking around, trying to find out what law enforcement knew during the investigative process. Jason, however, asserts the evidence is to the contrary and the information the defense received during the criminal case shows he was honest and forthright on this subject.

The Court does not recall this evidence being offered in the civil case, at least, not to

suggest Jason was “sneaking around” and was dishonest with law enforcement. Even if the Court misunderstood the testimony, Jason testified during the civil case he had seen evidence receipts and told investigators as much. The Court finds nothing of significance that would change the verdict in the civil trial based on Jason’s ability to prove he told law enforcement the truth regarding evidence receipts.

Jason’s proffered evidence is a red herring. That Jason can prove he was honest on this subject does make Jason any more or any less liable for the wrongful death of his mother. Even if everything Jason claims on this issue is true, this evidence does not establish a basis to vacate the judgment or to grant Jason a new trial.

6. *Law Enforcement Testimony at the Petition to vacate Hearing.*

Finally, Jason argues the testimony of law enforcement at the hearing presents a basis to vacate the judgment or grant him a new trial. Primarily, Defendant asserts law enforcement had the names of other possible suspects but failed to follow up on this information. Defendant characterizes the investigation as bungled and, hence, unreliable. Defendant alleges law enforcement made false statements to Jason’s attorneys, perhaps even intentionally misled them. Defendant also asserts Plaintiffs committed discovery violations.

a. **The Alleged Failure to Investigate Other Suspects.** According to Defendant, law enforcement failed to interview, failed to document interviews, or failed to check the cell phone records of approximately seventeen people with knowledge related to the murder. He asserts the absence of a thorough investigation was information the jury was entitled to hear and the Court should vacate the judgment and/or grant him a new trial. The Court disagrees.

Defendant contends investigators were “unwilling to consider any suspects other than Jason Carter” but this is contrary to the offers of proof made by Defendant during the petition to vacate hearing. Defendant offered into evidence the summaries of interviews of some fourteen or more people. The majority of these interviews related to suspects other than Jason Carter. In addition, Defendant offered into evidence note summaries from more than one law enforcement officer regarding interviews the officer conducted or observed. The note summaries related to interviews of an additional fifteen or so people. Defendant’s exhibits even included the polygraph results of one person with whom Jason Carter had a dispute over

farmland. This is on top of the multi-part interview of Robert Sedlock, who was looking to “make a deal” and was the primary accuser of people other than Jason Carter. All of these exhibits were received into evidence as offers of proof, because all involved some level of hearsay.

Based on Defendant’s proffered evidence, it is apparent to the Court that law enforcement attempted to follow up on leads indicating someone else was responsible for Shirley Carter’s death. The problem with the interview summaries, as stated in the Court’s original ruling, is they lack reliability. The summaries involve at least one level of hearsay and most involve two or more levels of hearsay, *i.e.*, the person interviewed heard it from a person who claims to have heard it from someone with direct knowledge. A hearsay statement, no matter how many times it is repeated, does not become more reliable: it is still hearsay. In addition, Defendant offered no corroboration for any of the allegations in these statements. Virtually all of the interview statements are varied stories of a burglary gone awry. Yet, the uniform evidence in the trial was that the burglary was staged, because items of interest to a burglar, such as cash, remained untouched. Jason also offered no evidence to verify Bill or Shirley Carter were taking or had access to any of the drugs identified in the interviews.

The fact law enforcement did not interview or check the cell phone records of an additional seventeen individuals identified by Defendant does not cause this Court to question the validity of the verdict. Law enforcement did a thorough investigation, although investigators could have done a better job of communicating with one another and documenting some of the interviews. However, at some point, continuing to interview individuals involved in the drug world with no first-hand knowledge and whose story will contravene the facts from the crime scene becomes problematic. Here, law enforcement did their job. The Court is unpersuaded by Defendant’s argument.

b. **Allegations of Misconduct.** Of concern to the Court are Defendant’s allegations of improper conduct by Plaintiffs’ counsel and the detective for the Marion County Sheriff’s Office. To support his claim to vacate the verdict or for new trial, Defendant alleges Plaintiffs’ counsel committed discovery violations and the detective misled Defendant’s attorneys. Defendant’s accusations appear to be based on theory without supporting facts.

(i) ***Alleged Discovery Violations.*** Defendant contends Plaintiffs committed discovery violations. Jason, however, did not file a motion or request a hearing to pursue that issue before or during the trial. To the best of the Court's knowledge, Plaintiffs, as they maintain, provided Defendant with all the information received from the DCI, which was the fighting evidentiary issue prior to trial. The basis for Defendant's conclusion seems to be that Plaintiffs knew other names were bandied about as potential suspects, but Plaintiffs did not tell the defendant.

Here, the Court believes Defendant may have blurred the lines between civil and criminal law. Importantly, a plaintiff in a civil suit is not under the same obligation as a prosecutor to turn over exculpatory evidence. However, even if they were, Defendant has failed to substantiate such a claim. To prove his allegation, Defendant points out that Plaintiff's counsel inquired of Jason about other possible suspects by name during his deposition. Jason's attorneys also asked about specific individuals during a meeting with the detective from the Marion County Sheriff's Office.

The defendant cannot have it both ways. Defendant cannot maintain his evidence is newly discovered if he had sufficient information about other suspects to be put on notice to investigate those individuals before the trial. Absent an effort to pursue an alleged discovery violation, the Court finds Plaintiffs' counsel did not act improperly.

(ii) ***The Marion County Sheriff's Detective.*** Similarly, Jason's accusation that the detective for the Marion County Sheriff's Office misled his attorneys is unsupported by any verifiable facts. During a meeting with the detective, which the detective recorded, Jason's attorneys asked about other possible suspects. Briefly summarized, the detective said other names had come up, but the stories did not pan out, because the information received contradicted facts known from the crime scene investigation. One of Jason's attorneys brought up a name that the detective denied having heard before. The attorney then explained that the story was this person was implicated, but not charged because the person did not have the type of weapon used in the murder. The detective stated this was the first time he had heard this claim.

Jason now contends information obtained during the criminal case establishes the

detective and the lead DCI agent interviewed an individual several months earlier who was implicated but not charged, because the person possessed the wrong type of weapon. Jason now feels misled, because the detective did not acknowledge the interview and denied having heard this story. However, the name of the person law enforcement interviewed and the name Jason's attorney gave the detective are two different people.

Despite his attorney having given the detective the wrong person's name, Jason asserts the detective misled his attorneys. No inquiry, to the knowledge of the Court, has been made of the detective, so he has not had the opportunity to respond to the allegation. If the detective intended to mislead counsel, he made a poor decision in recording the conversation. An even worse decision would be to provide that recording to the Court, which the detective did as part of the petition to vacate hearing. Here, Jason leaps to the conclusion the detective had to know who the attorney meant even if she used the wrong name. Such is not necessarily the case, particularly when months have elapsed between the interview and the discussion with counsel. Assuming, without concluding, an error was made, the error was in the question, not in the answer.

B. Judicial Notice.

Jason asks the Court to take judicial notice of the criminal case. Plaintiffs resist. The Court declines Jason's invitation.

Judicial notice has been said to be the act by which a court in "conducting a trial, or framing its decision, will... without production of evidence, recognize the existence and truth of certain facts, having a bearing on the controversy at bar, which, from their nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety." *State v. Berch*, 222 N.W.2d 741, 744 (Iowa 1974). More briefly stated, when a court takes judicial notice of an adjudicative fact, the court dispenses with formal proof because the fact is common knowledge or is capable of certain verification. *In Interest of H.G.*, 534 N.W.2d 113, 114–15 (Iowa Ct. App. 1995). A court may take judicial notice of an adjudicative fact or a legislative fact. Adjudicative facts are the facts of the particular case while legislative facts are laws enacted by a legislative body or principles of law such as those employed by a court when ruling on a case. *See City of Council Bluffs v. Cain*, 342 N.W.2d 810, 816 (Iowa 1983) (dissent).

Legislative facts, unlike adjudicative facts, are not particular to the parties or the case. *Id.*

Iowa Rule of Evidence 5.201 governs judicial notice of adjudicative facts. That rule provides a court may take judicial notice of a fact not subject to reasonable dispute if the fact:

- “(1) Is generally known within the trial court's territorial jurisdiction; or
- (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”

Iowa R. Evid. 5. 201(b). A court may take judicial notice on its own and must take judicial notice if a party requests it and the court is supplied with the necessary information. Iowa R. Evid. 5. 201(c). Necessary information may include documents and, sometimes, transcribed testimony. *See In Interest of Adkins*, 298 N.W.2d 273, 277–78 (Iowa 1980).

However, it is not proper for the court to consider or take judicial notice of the records of the same court in a different proceeding without an agreement of the parties. *State v. Aldrich*, 231 N.W.2d 890, 893 (Iowa 1975). Exceptions exist to this rule as when the pending proceeding is ancillary to a prior action. *See id; Harms v. Bennett*, 256 Iowa 1320, 1323, 130 N.W.2d 734, 736 (1964). Thus, a juvenile court in a termination proceeding may take judicial notice of the underlying Child in Need of Assistance case. *Adkins*, 298 N.W.2d at 277–78. The Iowa Supreme Court has also approved taking judicial notice of a prior habeas corpus action raising substantially the same issues as in a pending habeas corpus proceeding. *Harms*, 256 Iowa at 1323, 130 N.W.2d at 736.

Here, it would be improper for this Court to take judicial notice of the criminal action and the Court declines to do so. The exceptions to the general rule do not apply. The plaintiffs do not agree the Court should take judicial notice of the criminal case. The criminal case is not ancillary to the civil action even though the two cases arise out of the same facts. Further, Defendant has not provided the Court with the “necessary information” to enable the Court to take judicial notice. The Court, therefore, denies Defendant’s judicial notice request.

C. Conclusion.

The Court specifically denies every ground upon which Defendant seeks to vacate the civil judgment. The vast majority of the evidence Defendant claims may change the outcome is inadmissible and other grounds asserted by the defendant are immaterial to the result. Therefore, the Court concludes the outcome will not be different. The Court also denies Jason’s

request that the Court take judicial notice of the criminal proceeding.

This situation is a good example of dissimilar trial results when there is a different burden of proof. The burden of proof in a civil case is by the preponderance of the evidence, meaning the greater weight of the evidence. The burden of proof in a criminal case is beyond a reasonable doubt, which is a substantially heavier burden. The fact Jason was found not guilty by the jury in the criminal case does not negate the validity of the jury's verdict in the civil case. The not guilty verdict in the criminal case means there was a different burden of proof and the jury concluded the State did not meet its burden. A not guilty verdict does not necessarily indicate the jury concluded Jason was innocent, it indicates the State did not have sufficient evidence to convince twelve people of Jason's guilt. The fact of a not guilty verdict in the criminal case, thus, does not compel this court to vacate the civil judgment or grant Jason a new trial. Jason's requests to vacate the judgment or grant him a new trial and to take judicial notice of the criminal case are denied.

III. ORDER

IT IS THEREFORE THE ORDER of the Court and it reaffirms its original ruling on Defendant's Petition to vacate the judgment, as enlarged by this Ruling.

IT IS THE FURTHER ORDER of the Court that Defendant's request that the Court take judicial notice of the criminal proceeding is denied and overruled.

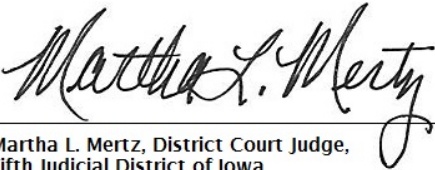


State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
LACV095809	BILL G. CARTER, ET AL. V. JASON CARTER

So Ordered


Martha L. Mertz, District Court Judge,
Fifth Judicial District of Iowa